

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, THE
EMPLOYEES RETIREMENT SYSTEM OF THE
GOVERNMENT OF THE COMMONWEALTH OF
PUERTO RICO, AND THE PUERTO RICO PUBLIC
BUILDINGS AUTHORITY,

Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**URGENT MOTION OF THE DEBTORS, BY AND THROUGH
THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,
TO FILE CERTAIN EXHIBITS UNDER SEAL IN CONNECTION WITH THEIR
AMENDED EXHIBIT LIST**

To the Honorable United States District Court Judge Laura Taylor Swain:

The Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as the sole Title III representative of the Commonwealth of Puerto Rico (the “Commonwealth”), the Employees Retirement System of the Government of the Commonwealth of Puerto Rico

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283- LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17- BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

(“ERS”), and the Puerto Rico Public Buildings Authority (“PBA,” and together with the Commonwealth and ERS, the “Debtors”), pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”),² respectfully submits this *Urgent Motion of the Debtors, by and through the Financial Oversight and Management Board for Puerto Rico, to File Certain Exhibits Under Seal in Connection with its Amended Exhibit List* (the “Urgent Motion”) requesting the entry of an order granting the Debtors leave to file certain exhibits under seal in connection with the Debtors’ Amended Exhibit List (as defined below).

JURISDICTION AND VENUE

1. The United States District Court for the District Court of Puerto Rico has subject matter jurisdiction over this matter pursuant to section 306(a) of PROMESA. Venue is proper pursuant to section 307(a) of PROMESA.

2. The statutory basis for the relief requested herein is section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9018, made applicable to these proceedings by PROMESA §§ 301(a) and 310, and Local Rule 9018-1 of the Local Bankruptcy Rules for the District of Puerto Rico (the “Local Rules”).

BASIS FOR RELIEF REQUESTED

3. On October 5, 2021, the Court issued the *Amended Order Establishing Procedures and Deadlines Concerning Objections to Confirmation and Discovery in Connection Therewith* [ECF No. 18394] (the “Confirmation Procedures Order”). The Confirmation Procedures Order established procedures and deadlines concerning discovery in connection with confirmation of the

² PROMESA is codified at 48 U.S.C. §§ 2101–2241.

Plan³ and modified and extended the provisions of the Protective Order⁴ to apply to the confirmation proceedings. Confirmation Procedures Order, ¶ 6.

4. On October 14, 2021, the Court issued the *Order Regarding Procedures for Hearing on Confirmation of Plan of Adjustment* [ECF No. 18502] (the “Confirmation Hearing Procedures Order”). The Confirmation Hearing Procedures Order requires each party who wishes to participate in the Confirmation Hearing to file a Pretrial Informative Motion, Party Appearance Sheet, Witness Cover Sheet, and Exhibit Cover Sheet.⁵

5. On October 22, 2021, pursuant to the Confirmation Procedures Order, the Debtors filed their *Debtors’ Final Exhibit List* [ECF No. 18687-1] (the “Exhibit List”).

6. On October 26, 2021, the Court issued the *Order Regarding Confirmation Hearing Exhibit Procedures* [ECF No. 18749] (the “Confirmation Exhibits Order”). The Confirmation Exhibits Order requires each party to file an amended exhibit list (the “Amended Exhibit List”), and to attach all exhibits proffered by that party to their Amended Exhibit List. The Confirmation Exhibits Order further allows a party who has included an exhibit on their Amended Exhibit List that is subject to a sealing application to file a placeholder for the exhibit indicating that the exhibit is subject to a forthcoming motion to seal. Confirmation Exhibits Order, ¶ 4.

³ “Plan” refers to the *Seventh Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.* [ECF No. 17627] as it may be amended, modified, or supplemented from time to time.

⁴ “Protective Order” refers to the protective order approved by the Court as Exhibit 2 to the DS Scheduling Order [ECF No. 16681], as modified by paragraph 6 of the Confirmation Procedures Order.

⁵ Capitalized terms not defined herein shall have the meaning ascribed to them in the Confirmation Hearing Procedures Order.

7. In their Amended Exhibit List,⁶ the Debtors identified the following exhibits as confidential (collectively, the “Confidential Exhibits”):

- Debtors’ Exhibit 43: Submission by AAFAF/Conway to Ernst & Young dated December 11, 2020;
- Debtors’ Exhibit 46: Sistema de Retiro para Maestros – Total of benefits paid for fiscal year 2018-2021;
- Debtors’ Exhibit 47: Milliman Letter re PRTRS—Benefit Payment and Member Contribution Projections Reflecting the 2018 Voluntary Transition Program (February 20, 2019);
- Debtors’ Exhibit 48: Sistema de Retiro para Maestros - Total of benefits paid for fiscal year 2018-2021;
- Debtors’ Exhibit 49: Spreadsheet including information for incorporation into April 2021 Commonwealth certified fiscal plan;
- Debtors’ Exhibit 50: Roster de empleados - 4 - enero - 2021;
- Debtors’ Exhibit 51: TRS PayGo Expense Dec 2020;
- Debtors’ Exhibit 52: Oversight Board Average Statistics by Pension Class (July 9, 2021);
- Debtors’ Exhibit 53: Retiree Committee Requests - Employee Contributions for Act 447, Law 3, System 2000 and Act 3; System 2000 Balance Contributions;
- Debtors’ Exhibit 54: Estimated headcount by class (July 26, 2021);
- Debtors’ Exhibit 55: Oversight Board POA pension classes and claim (June 24, 2021);
- Debtors’ Exhibit 56: Spreadsheet including information for incorporation into April 2021 Commonwealth certified fiscal plan.

8. The Protective Order provides that documents which the Debtors consider in good faith to contain personal, proprietary, or otherwise confidential information that would have a

⁶ The Debtors filed their Amended Exhibit List at ECF No. 18785, and further motions submitting the Debtors’ exhibits at ECF Nos. 18791, 18794, 18797, 18800, 18802, 18803, 18805, 18806, and 18807.

detrimental effect on the Debtors or third parties if it were publicly disclosed may be deemed confidential. Debtors' Exhibits 45-56 were designated as "Confidential" pursuant to the Protective Order when they were produced and uploaded to the Plan Depository. Debtors' Exhibit 43 is a non-final submission from AAFAF's financial advisor to the Oversight Board containing sensitive, non-public information regarding AAFAF's proposal for the Commonwealth's minimum cash requirements, and therefore likewise meets the criteria to be designated as "Confidential" pursuant to the Protective Order.

RELIEF REQUESTED

9. The Debtors seek to file the Confidential Exhibits, which were designated as confidential on the Amended Exhibit List, under seal. By this Urgent Motion, the Debtors request that the Court maintain the confidentiality of the Confidential Exhibits.

10. In accordance with Local Bankruptcy Rule 9013-1(a)(2), undersigned counsel certifies that counsel has carefully examined the matter and concluded that there is a true need for expedited consideration of the Urgent Motion, and that the Debtors have not created the urgency through lack of due diligence on their part. The undersigned further certifies that the Commonwealth made a bona fide and good faith effort to resolve the matter without a hearing.

NO PRIOR REQUEST

11. No prior request for the relief sought in this Urgent Motion has been made to this or any other court.

[Remainder of page intentionally left blank]

WHEREFORE the Debtors respectfully request the Court enter the Proposed Order attached as Exhibit A, granting the relief requested herein and all other relief as is just and proper.

Dated: October 28, 2021
San Juan, Puerto Rico

Respectfully submitted,

/s/ Martin J. Bienenstock

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CERTIFICATE OF SERVICE

I hereby certify that, on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notifications of such filing to all CM/ECF participants in this case.

/s/ Hermann D. Bauer
Hermann D. Bauer

Exhibit A

Proposed Order

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, THE
EMPLOYEES RETIREMENT SYSTEM OF THE
GOVERNMENT OF THE COMMONWEALTH OF
PUERTO RICO, AND THE PUERTO RICO PUBLIC
BUILDINGS AUTHORITY,

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PROMESA
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**[PROPOSED] ORDER GRANTING URGENT MOTION OF THE DEBTORS,
BY AND THROUGH THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD
FOR PUERTO RICO, TO FILE CERTAIN EXHIBITS UNDER SEAL IN
CONNECTION WITH THEIR AMENDED EXHIBIT LIST**

Upon consideration of the *Urgent Motion of the Debtors, by and through the Financial Oversight and Management Board for Puerto Rico, to File Certain Exhibits Under Seal in Connection with their Amended Exhibit List* (the “Urgent Motion”), filed by the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as the sole Title III

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representative of the Commonwealth of Puerto Rico (the “Commonwealth”), the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”), and the Puerto Rico Public Buildings Authority (“PBA,” and together with the Commonwealth and ERS, the “Debtors”), pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”); and the Court having found that it has jurisdiction over this matter pursuant to PROMESA section 306; and it appearing that venue in this district is proper pursuant to PROMESA section 307; and the Court having found that, based on the statements and arguments made in the Urgent Motion, it is appropriate for the Oversight Board to file the confidential exhibits further identified in the Urgent Motion (the “Confidential Exhibits”) under seal in connection with the Debtors’ Amended Exhibit List; and due and proper notice of the Motion to Seal having been provided under the particular circumstances and that no other or further notice is required; and after due deliberation and sufficient cause appearing therefore, it is hereby ORDERED that:

1. The Commonwealth is entitled to file the Confidential Exhibits under seal;
2. The parties that are entitled to access the Confidential Exhibits are those that have signed the Protective Order;
3. The order is without prejudice to the rights of any party in interest to seek to unseal the documents or any part thereof.

Dated: _____

LAURA TAYLOR SWAIN
United States District Judge